

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 576

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Mary Helen Garcia

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE AND THE
ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

AN ACT

RELATING TO ADMINISTRATIVE PROCEDURES; REQUIRING THE
ESTABLISHMENT OF SPECIFIC TIME FRAMES FOR AGENCY LICENSING
PROCESSES; ESTABLISHING A TIME FRAME FOR AN AGENCY TO IMPOSE A
SANCTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Administrative Procedures
Act is enacted to read:

"[NEW MATERIAL] AGENCY LICENSING TIME FRAMES REQUIRED.--

A. An agency shall promulgate rules establishing
time frames for both administrative and substantive reviews of
applications for licenses and for the overall time frame within
which its licensing process shall be completed. This
requirement does not apply to licenses that are issued pursuant
to a tribal state gaming compact or a lottery method or that

.174255.2

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 are issued within thirty days after receipt of the initial
2 applications.

3 B. A statutory time frame for an administrative
4 review or a substantive review or an overall time frame that is
5 enacted prior to July 1, 2009 shall be amended to include a
6 time frame for administrative review, a time frame for
7 substantive review and an overall time frame, if any such time
8 frame was excluded in the enactment.

9 C. When establishing the time frames for its
10 licensing process, an agency shall consider:

11 (1) the complexity of the licensing subject
12 matter;

13 (2) the agency's resources, including the
14 involvement of expert volunteers;

15 (3) the economic impact on the applicant of a
16 delay in agency action;

17 (4) the impact of such licensing on public
18 health, safety and welfare;

19 (5) the merits of using a general license for
20 similar types of licensed businesses or facilities;

21 (6) cooperating with the regulated entity and
22 the affected community; and

23 (7) flexibility in structuring the licensing."

24 Section 2. A new section of the Administrative Procedures
25 Act is enacted to read:

.174255.2

underscoring material = new
[bracketed material] = delete

1 "[NEW MATERIAL] INFORMATION TO BE FURNISHED TO AN
2 APPLICANT FOR A LICENSE.--An agency shall provide the following
3 information to an applicant for a license at the time the
4 applicant receives the application:

5 A. a list of steps the applicant must take in order
6 to obtain the license;

7 B. the name and telephone number of a contact
8 person in the agency who can answer questions or provide
9 assistance throughout the licensing process; and

10 C. the applicable time frame for administrative
11 review, time frame for substantive review and overall time
12 frame."

13 Section 3. A new section of the Administrative Procedures
14 Act is enacted to read:

15 "[NEW MATERIAL] REQUIREMENTS FOR AN ADMINISTRATIVE
16 REVIEW.--

17 A. An agency shall issue a written notice to an
18 applicant stating whether the submitted application is
19 administratively complete or administratively deficient.

20 B. If an agency determines that an application is
21 administratively deficient, the agency shall send the applicant
22 a written list of specific deficiencies. If the list of
23 specific deficiencies is issued within the time frame for
24 administrative review, the overall time frame and the time
25 frame for administrative review shall be suspended from the

.174255.2

underscored material = new
[bracketed material] = delete

1 date the list is issued until the date the agency receives the
2 missing information.

3 C. The time frame for administrative review shall
4 not include the period of time during which an agency provides
5 public notice of the license or performs a review of the
6 request for a license under the time frame for substantive
7 review.

8 D. If the agency does not issue a written notice
9 within its established time frame for administrative review as
10 to whether the application is administratively complete or
11 administratively deficient, the application shall be deemed
12 administratively complete."

13 Section 4. A new section of the Administrative Procedures
14 Act is enacted to read:

15 "[NEW MATERIAL] REQUIREMENTS FOR A SUBSTANTIVE REVIEW.--

16 A. Within the time frame for substantive review
17 established by the agency, the agency may submit one
18 comprehensive written request for additional information from
19 the applicant, unless the agency and the applicant mutually
20 agree in writing to allow the agency to submit supplemental
21 requests for additional information.

22 B. The time frame for substantive review and the
23 overall time frame shall be suspended from the date a
24 comprehensive written request or a supplemental request is
25 issued until the date the agency receives the additional

.174255.2

underscored material = new
[bracketed material] = delete

1 information from the applicant.

2 C. By mutual written agreement, an agency and an
3 applicant may extend the time frame for substantive review and
4 the overall time frame; except that an extension of the time
5 frame for substantive review and the overall time frame shall
6 not exceed twenty-five percent of the overall time frame."

7 Section 5. A new section of the Administrative Procedures
8 Act is enacted to read:

9 "[NEW MATERIAL] REQUIREMENTS FOR AN OVERALL REVIEW.--

10 A. An agency shall issue a written notice granting
11 or denying a license to an application within the overall time
12 frame that it specifies by rule, unless the agency and the
13 applicant for the license mutually agree to extend the time
14 frame.

15 B. An agency that denies an application shall
16 justify the denial with a citation to statute or rules and
17 explain the applicant's right to appeal the denial, including
18 the number of days during which the applicant may file a
19 protest challenging the denial and the name and telephone
20 number of an agency contact person who can answer questions
21 regarding the appeals process.

22 C. If an agency fails to meet the overall time
23 frame when processing an application for licensing, it shall:

24 (1) refund to the applicant all fees charged
25 for reviewing and acting on the license application;

.174255.2

underscored material = new
[bracketed material] = delete

- 1 (2) excuse payment of unpaid fees;
2 (3) not require the applicant to submit an
3 application for a refund;
4 (4) refund the application money to the
5 applicant within thirty days of the expiration of the overall
6 time frame or the time frame extension;
7 (5) make the refund from the fund in which the
8 application fees were originally deposited;
9 (6) continue to process the application; and
10 (7) file a written report of the failure to
11 meet the overall time frame deadline to the governor, the
12 president pro tempore of the senate and the speaker of the
13 house of representatives. The president pro tempore and the
14 speaker of the house shall refer the written report to one or
15 more interim or standing legislative committees for further
16 review."

17 Section 6. A new section of the Administrative Procedures
18 Act is enacted to read:

19 "[NEW MATERIAL] TIME FRAME FOR IMPOSING A SANCTION.--

20 A. No later than December 31, 2009, an agency shall
21 establish by rule a time frame to pursue a sanction, unless
22 such a statutory or regulatory time frame has already been
23 established.

24 B. Unless established pursuant to this section, the
25 time frame for imposing a sanction is within three hundred

.174255.2

underscoring material = new
[bracketed material] = delete

1 sixty-five days of a negative finding by the agency. If an
2 agency establishes a time frame pursuant to this section, it
3 shall take an agency action within the time frame or be barred
4 from further action.

5 C. The time frame for a sanction established
6 pursuant to this section shall be calculated as the number of
7 days after the date the agency knew or had reason to know of
8 facts allowing the agency to impose a sanction until the date
9 the agency issues a final order imposing a sanction.

10 D. An agency may establish by rule a different time
11 frame for each type of sanction.

12 E. Within the time frame set by the agency to
13 pursue a sanction, the agency shall issue a final order
14 imposing a sanction. The written order shall include:

15 (1) a citation to the legal authority for the
16 decision;

17 (2) relevant factual information supporting
18 the decision; and

19 (3) an explanation of the right to appeal the
20 sanction, including the number of days in which the appeal must
21 be filed."

22 Section 7. Section 12-8-1 NMSA 1978 (being Laws 1969,
23 Chapter 252, Section 1) is amended to read:

24 "12-8-1. SHORT TITLE.--~~[This act]~~ Chapter 12, Article 8
25 NMSA 1978 may be cited as the "Administrative Procedures Act"."

.174255.2

underscoring material = new
[bracketed material] = delete

1 Section 8. Section 12-8-2 NMSA 1978 (being Laws 1969,
2 Chapter 252, Section 2) is amended to read:

3 "12-8-2. DEFINITIONS.--As used in the Administrative
4 Procedures Act:

5 ~~[A. "agency" means any state board, commission,
6 department or officer authorized by law to make rules, conduct
7 adjudicatory proceedings, make determinations, grant licenses,
8 impose sanctions, grant or withhold relief or perform other
9 actions or duties delegated by law and which is specifically
10 placed by law under the Administrative Procedures Act;~~

11 B.] A. "adjudicatory proceeding" means a proceeding
12 before an agency, including but not limited to ratemaking and
13 licensing, in which legal rights, duties or privileges of a
14 party are required by law to be determined by an agency after
15 an opportunity for a trial-type hearing; but does not include a
16 mere rulemaking proceeding as provided in Section ~~[3 of the~~
17 ~~Administrative Procedures Act]~~ 12-8-3 NMSA 1978. It also
18 includes the formation and issuance of any order, the
19 imposition or withholding of any sanction and the granting or
20 withholding of any relief, as well as any of the foregoing
21 types of determinations or actions wherein no procedure or
22 hearing provision has been otherwise provided for or required
23 by law;

24 B. "administrative review" means an agency
25 determination of whether an application or an applicant for a

.174255.2

underscoring material = new
[bracketed material] = delete

1 license meets all procedural criteria required by statute or
2 rule;

3 C. "administratively complete" means an agency
4 determination that a submitted application for a license
5 includes all information required by statute or rule and that
6 the agency is able to conduct a substantive review of the
7 request for a license;

8 D. "administratively deficient" means an agency
9 determination that a submitted application does not include
10 information required by statute or rule and that the agency is
11 not able to conduct a substantive review of the request for a
12 license;

13 E. "agency" means a state board, commission,
14 department or officer that is authorized by law to make rules,
15 conduct adjudicatory proceeding, make determinations, grant
16 licenses, impose sanctions, grant or withhold relief or perform
17 other actions or duties delegated by law that is specifically
18 placed by law under the Administrative Procedures Act;

19 F. "agency action" includes the whole or part of
20 every agency rule, order, license, sanction or relief, or the
21 equivalent or denial thereof, or failure to act;

22 G. "agency proceedings" means any agency process in
23 connection with rulemaking, orders, adjudication, licensing,
24 imposition or withholding of sanctions or the granting or
25 withholding of relief;

.174255.2

underscored material = new
[bracketed material] = delete

1 [~~G.~~] H. "license" includes the whole or part of
2 ~~[any]~~ an agency permit, certificate, approval, registration,
3 charter, membership, statutory exemption or other form of
4 permission required by law;

5 [~~D.~~] I. "licensing" includes the agency process
6 ~~[respecting]~~ relating to the grant, denial, renewal,
7 revocation, suspension, annulment, withdrawal, amendment,
8 limiting, modifying or conditioning of a license;

9 J. "order" means the whole or any part of the final
10 or interim disposition, whether affirmative, negative,
11 injunctive or declaratory in form, by an agency in any matter
12 other than rulemaking but including licensing;

13 K. "overall time frame" means the number of days
14 after receipt of an application for a license during which an
15 agency determines whether to grant or deny the license,
16 including both the time frame for administrative review and the
17 time frame for substantive review;

18 [~~E.~~] L. "party" means each person or agency named
19 or admitted as a party or properly seeking and entitled as of
20 right to be admitted as a party, whether for general or limited
21 purposes;

22 [~~F.~~] M. "person" means any individual, partnership,
23 corporation, association, governmental subdivision or public or
24 private organization of any character other than an agency;

25 [~~G.~~] N. "rule" includes the whole or any part of

underscored material = new
[bracketed material] = delete

1 every regulation, standard, statement or other requirement of
2 general or particular application adopted by an agency to
3 implement, interpret or prescribe law or policy enforced or
4 administered by an agency, if the adoption or issuance of such
5 rules is specifically authorized by the law giving the agency
6 jurisdiction over such matters. It also includes any statement
7 of procedure or practice requirements specifically authorized
8 by the Administrative Procedures Act or other law, but it does
9 not include:

10 (1) advisory rulings issued under Section [9
11 ~~of the Administrative Procedures Act~~] 12-8-9 NMSA 1978;

12 (2) regulations concerning only the internal
13 management or discipline of the adopting agency or any other
14 agency and not affecting the rights of, or the procedures
15 available to, the public or any person except an agency's
16 members, officers or employees in their capacity as [~~such~~
17 ~~member, officer or employee~~] members, officers or employees;

18 (3) regulations concerning only the
19 management, confinement, discipline or release of inmates of
20 state penal, correctional, public health or mental
21 institutions;

22 (4) regulations relating to the use of
23 highways or streets when the substance of the regulations is
24 indicated to the public by means of signs or signals; or

25 (5) decisions issued or actions taken or

.174255.2

underscored material = new
[bracketed material] = delete

1 denied in adjudicatory proceedings;

2 O. "relief" includes the whole or part of any
3 agency:

4 (1) grant of money, assistance, license,
5 authority, exemption, exception, privilege or remedy;

6 (2) recognition of any claim, right, interest,
7 immunity, privilege, exemption or exception; or

8 (3) taking of any other action upon the
9 application or petition of, and beneficial to, any person;

10 ~~[H.]~~ P. "rulemaking" means any agency process for
11 the formation, amendment or repeal of a rule;

12 ~~[I. "order" means the whole or any part of the~~
13 ~~final or interim disposition, whether affirmative, negative,~~
14 ~~injunctive or declaratory in form, by an agency in any matter~~
15 ~~other than rulemaking but including licensing;~~

16 ~~J.]~~ Q. "sanction" includes the whole or part of any
17 agency:

18 (1) prohibition, requirement, limitation or
19 other condition affecting the freedom of any person or ~~[his]~~
20 the person's property;

21 (2) withholding of relief;

22 (3) imposition of any form of penalty;

23 (4) destruction, taking, seizure or
24 withholding of property;

25 (5) assessment of damages, reimbursement,

.174255.2

underscored material = new
[bracketed material] = delete

1 restitution, compensation, taxation, costs, charges or fees;

2 (6) requirement, revocation, amendment,
3 limitation or suspension of a license; or

4 (7) taking or withholding of other compulsory,
5 restrictive or discretionary action;

6 [~~K. "relief" includes the whole or part of any~~
7 ~~agency:~~

8 (1) ~~grant of money, assistance, license,~~
9 ~~authority, exemption, exception, privilege or remedy;~~

10 (2) ~~recognition of any claim, right, interest,~~
11 ~~immunity, privilege, exemption or exception; or~~

12 (3) ~~taking of any other action upon the~~
13 ~~application or petition of, and beneficial to, any person;~~

14 L. ~~"agency proceedings" means any agency process in~~
15 ~~connection with rulemaking, orders, adjudication, licensing,~~
16 ~~imposition or withholding of sanctions or the granting or~~
17 ~~withholding of relief; and~~

18 M. ~~"agency action" includes the whole or part of~~
19 ~~every agency, rule, order, license, sanction or relief, or the~~
20 ~~equivalent or denial thereof, or failure to act]~~

21 R. "substantive review" means an agency
22 determination of whether an application or applicant for a
23 license meets all substantive criteria required by statute or
24 rule;

25 S. "time frame for administrative review" means the

.174255.2

underscored material = new
[bracketed material] = delete

1 number of days after the date an agency receives an applicant's
2 request for a license until the date the agency determines that
3 the request for the license is administratively complete or
4 administratively deficient; and

5 T. "time frame for substantive review" means the
6 number of days after the date of completion of the time frame
7 for administrative review until the date an agency concludes
8 the substantive review of a license, including the time period
9 for any public notice or hearing required by law."